

ESTTA Tracking number: **ESTTA774228**

Filing date: **10/03/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	National Tobacco Company, L.P.		
Entity	Partnership	Citizenship	Delaware
Composed Of:	National Tobacco Finance Corporation		
Address	5201 Interchange Way Louisville, KY 40229 UNITED STATES		

Attorney information	Amy B. Berge Middleton Reutlinger 401 S. Fourth Street Suite 2600 Louisville, KY 40202 UNITED STATES aberge@middletonlaw.com, jdages@middletonlaw.com Phone:502-625-2887
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Registration Subject to Cancellation

Registration No	4034632	Registration date	10/04/2011
Registrant	Yellowstone Tobacco Co., LLC PO Box 179 Frannie, WY 82423 UNITED STATES		

Goods/Services Subject to Cancellation


Class 034. First Use: 2010/02/04 First Use In Commerce: 2010/02/10 All goods and services in the class are cancelled, namely: Cigarette paper; Cigarette papers; Cigarette rolling machines; Cigarette rolling papers; Cigarette tubes; Cigarettes

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act Sections 14(1) and 2(d)
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Mark Cited by Petitioner as Basis for Cancellation

U.S. Application No.	86815098	Application Date	11/10/2015
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BIG BAG BIG SAVINGS		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 034. First use: First Use: 2007/06/13 First Use In Commerce: 2007/06/13 Chewing tobacco; Smokeless Tobacco

Attachments	86815098#TMSN.png(bytes) Petitioner for Cancellation - BIG BAG.pdf(273674 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Amy B. Berge/
Name	Amy B. Berge
Date	10/03/2016

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of U.S. Registration No. 4,034,632

Mark: BIG BAG

Reg. Date: October 4, 2011

NATIONAL TOBACCO COMPANY, L.P.)

Petitioner)

v.)

Cancellation No. _____)

YELLOWSTONE TOBACCO CO., LLC)

Respondent)

FILED VIA ESTTA

Trademark Trial and Appeal Board
P.O. Box 1451
Arlington, Virginia 22313-1451

PETITION FOR CANCELLATION

Pursuant to Section 1064 of Title 15, United States Code, Petitioner, National Tobacco Company, L.P., believes that it will be damaged by continued registration of Registration No. 4,034,632 for the mark "BIG BAG" [standard characters] (the "Registration") in International Class 034 for "Cigarette paper; Cigarette papers; Cigarette rolling machines; Cigarette rolling papers; Cigarette tubes; Cigarettes," and hereby petitions to cancel said Registration. Petitioner alleges, as grounds for this petition, as follows:

1. Petitioner, National Tobacco Company, L.P., is a limited partnership organized and existing under the laws of Delaware, with a mailing address of 5201 Interchange Way, Louisville, Kentucky 40229.

2. To the best of Petitioner's knowledge, the name and address of the owner of the Registration ("Respondent") are as listed on the records of the Trademark Office, namely, Yellowstone Tobacco Co., LLC, a Wyoming limited liability company, P.O. Box 179, 507 N. Ash, Frannie, Wyoming 82423.

3. Petitioner adopted and has continuously use the mark BIG BAG BIG SAVINGS in connection with the following goods since at least as early as June 13, 2007, as set forth in its pending application Serial No. 86/815,098: "Chewing tobacco; Smokeless Tobacco" in Class 034.

4. Registration No. 4,034,632, sought to be cancelled, is for the mark BIG BAG, presently registered for "Cigarette paper; Cigarette papers; Cigarette rolling machines; Cigarette rolling papers; Cigarette tubes; Cigarettes."

5. The Trademark Office has issued a final refusal of registration for the mark of Petitioner's pending application Serial No. 86/815,098 pursuant to Section 2(d) of the Lanham Act [15 U.S.C. § 1052(d)], on the grounds of alleged likelihood of confusion with the Registration.

6. Without cancellation of the Registration, Petitioner might not be able to establish the *prima facie* exclusive right to use the mark BIG BAG BIG SAVINGS on its applied-for goods, which would be to the detriment of Petitioner.

7. To the extent, that Petitioner's mark is sufficiently related to cause confusion with the mark of Registration No. 4,034,632, as the trademark examining attorney contends, the continued registration of the Registration would be to the great detriment of Petitioner.

8. Upon information and belief, Respondent has no rights in the registered mark BIG BAG prior to February 2, 2010 -- the first use date in commerce that is set forth in the Registration, which is over two years after Petitioner's first use date in commerce. Therefore, to the extent the respective marks of the parties (when used with the parties' respective goods) are sufficiently related to cause confusion, as the trademark examining attorney contends, Petitioner, and not Respondent, has priority of use and is entitled to registration.

9. If the Registration is allowed to subsist on the Principal Register, a cloud may be placed on Petitioner's ability to establish title in and to the mark BIG BAG BIG SAVINGS, and on its right to enjoy the free and exclusive use thereof in connection with the goods with which Petitioner uses the mark, all to the great injury of Petitioner.

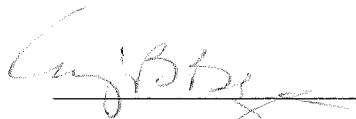
WHEREFORE, Petitioner alleges that it is or will be damaged by the continued registration of Registration No. 4,034,632, and petitions for cancellation thereof.

Petitioner hereby appoints the undersigned counsel and the law firm MIDDLETON REUTLINGER, 401 South Fourth Street, Suite 2600, Louisville, Kentucky 40202, (502) 584-1135, as its attorney with full power of substitution and revocation, to prosecute this cancellation proceeding, and to transact all business in the Trademark Office in connection therewith.

The filing fee required in Section 2.6(a)(16) is submitted herewith (\$300.00 per class).

Respectfully submitted,

Dated: October 3rd, 2016



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Counsel for Petitioner,
National Tobacco Company, L.P.

PROOF OF SERVICE PURSUANT TO 37 C.F.R. §§ 2.111 & 2.119

The undersigned hereby certifies that the foregoing Petition for Cancellation was served, pursuant to 37 C.F.R. §§ 2.111 and 2.119, upon the following owner of record for the registration, at the following address, by transmitting the document via U.S. first class mail, postage prepaid, this 3rd day of October 2016:

Yellowstone Tobacco Co.
P.O. Box 179
507 N. Ash
Frannie, Wyoming 82423



Amy B. Berge
Counsel for Petitioner
National Tobacco Company, L.P.